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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

15
16 SECURITIES AND EXCHANGE
COMMISSION,

17 Applicant,

18 v.

19 ELON MUSK,

20 Respondent.

Case No. 3:23-mc-80253-LB

**ADMINISTRATIVE MOTION UNDER
CIVIL LOCAL RULE 7-11 TO CLARIFY
THE COURT'S FEBRUARY 10 ORDER
COMPELLING COMPLIANCE WITH
ADMINISTRATIVE SUBPOENA**

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22
23 On February 10, 2024, the Court granted the Securities and Exchange Commission (SEC)'s
24 application for an order compelling compliance with an administrative subpoena. Dkt. No. 37.
25 Mr. Musk respectfully disagrees with the Court's reasoning on the merits and plans to seek review
26 in the district court. Mr. Musk submits this Motion for Administrative Relief pursuant to Civil Local
27 Rule 7-11 only to clarify a procedural point: Because the SEC's application is a *dispositive* motion
28 (*i.e.*, it ends this proceeding), the Court's resolution of the motion operates as a report and

1 recommendation that would take binding legal effect only after either the 14-day period for
 2 objections has passed or any filed objections are rejected by the district court on *de novo* review.
 3 *See* Fed. R. Civ. P. 72(b)(1)–(3). Given that the caption on the Court’s ruling and the contemplated
 4 timeline for the parties to confer on a date for testimony could arguably be regarded as inconsistent
 5 with that understanding, Mr. Musk respectfully requests that the Court clarify that its February 10
 6 ruling is a report and recommendation on a dispositive motion and that no aspect of the ruling is
 7 binding at this time. *See id.*; *see also, e.g., EEOC v. Anna’s Linens Co.*, 2006 WL 1329650, at *1
 8 (N.D. Cal. May 15, 2006) (discussing a magistrate judge’s ruling on an application to enforce an
 9 administrative subpoena that was initially styled as an order but was then properly recharacterized
 10 as a report and recommendation). The SEC declined to stipulate to the relief requested on the basis
 11 that it does not believe this motion is necessary. *See* Spiro Decl. ¶ 5.

12 1. “[A] magistrate judge may not issue binding rulings on case-dispositive matters
 13 without the parties’ consent.” *CPC Patent Tech. Pty Ltd. v. Apple, Inc.*, 34 F.4th 801, 807 (9th Cir.
 14 2022); *see* 28 U.S.C. § 636(b)–(c); Fed. R. Civ. P. 72(a)–(b). It is undisputed that Mr. Musk did not
 15 provide such consent here. Dkt. No. 16. Whether this Court’s ruling is binding therefore depends
 16 on whether the motion resolved by that ruling is dispositive.

17 To determine whether a motion is dispositive, the Ninth Circuit has “adopted a functional
 18 approach that looks to the effect of the motion, in order to determine whether it is properly
 19 characterized as dispositive or non-dispositive of a claim or defense of a party.” *Flam v. Flam*, 788
 20 F.3d 1043, 1046 (9th Cir. 2015) (alterations adopted) (internal quotation marks omitted); *see also*
 21 *SEC v. CMKM Diamonds, Inc.*, 729 F.3d 1248, 1260 (9th Cir. 2013) (“[W]here the denial of a
 22 motion to stay is effectively a denial of the ultimate relief sought, such a motion is considered
 23 dispositive, and a magistrate judge lacks the authority to ‘determine’ the matter.”).

24 2. Under that framework, a ruling on the enforcement of an administrative subpoena is
 25 dispositive because it disposes of the sole issue in the case. *See D.I Operating Co. v. United States*,
 26 321 F.2d 586, 587 (9th Cir. 1963). In *D.I. Operating Co.*, for example, the Ninth Circuit held the
 27 denial of a motion to quash an IRS summons was a final appealable order because it brought “the
 28 end of a proceeding begun against the witness.” *Id.*

1 In keeping with that understanding, courts in this District (and elsewhere) have consistently
 2 recognized that a magistrate judge’s ruling on the enforcement of an administrative subpoena is a
 3 dispositive matter subject to *de novo* review by the district court. *See, e.g., Doe v. SEC*, 2011 WL
 4 5600513, at *2 (N.D. Cal. Nov. 17, 2011) (“Because the order denying the motion to quash disposed
 5 of the sole issue in the case, the court finds that the magistrate order was dispositive.”); *Anna’s*
 6 *Linens Co.*, 2006 WL 1329650, at *1 (“Because resolution of the application for enforcement of the
 7 subject subpoena is dispositive of the above-titled miscellaneous matter, the [ruling of the magistrate
 8 judge] is not a final order,” but instead a report and recommendation.); *United States v. Bell*, 57
 9 F. Supp. 2d 898, 904 (N.D. Cal. 1999) (“Once the petition [to enforce the administrative subpoena]
 10 is decided, the matter is over. While the petition to enforce seeks documents and records as in a
 11 discovery motion, unlike a discovery motion, the petition is not ancillary to a larger proceeding. It
 12 is the entire proceeding.”); *see also NLRB v. Frazier*, 966 F.2d 812, 817 (3rd Cir. 1992) (“In a
 13 proceeding to enforce a subpoena, the case before the district court is over regardless of which way
 14 the court rules.”); *Aluminum Co. of America, Badin Works, Badin, N.C. v. U.S. EPA*, 663 F.2d 499,
 15 501–02 (4th Cir. 1981) (holding that motion to quash administrative search warrant was dispositive,
 16 requiring *de novo* review by the district court of the magistrate judge’s “proposed findings of fact
 17 and conclusions of law,” because the motion “set forth all of the relief requested”).

18 3. Those principles and precedents make the issue here straightforward. Because the
 19 Court’s ruling on the SEC’s application to enforce compliance with an administrative subpoena
 20 “disposed of the sole issue in the case, . . . the magistrate order was dispositive.” *Doe*, 2011 WL
 21 5600513 at *2. The court in *Doe* addressed this issue directly in the context of a magistrate judge’s
 22 ruling on the enforceability of an SEC administrative subpoena. *See id.* Concluding that *de novo*
 23 review applied to those portions that had been properly objected to, Judge Breyer expressly rejected
 24 the SEC’s argument that the magistrate judge’s ruling was a nondispositive order. *Id.*

25 The decision in *Anna’s Linens* is also instructive. There, the magistrate judge initially issued
 26 an order granting an agency’s application for enforcement of an administrative subpoena that was
 27 not styled as a report and recommendation, but the magistrate judge later amended the order to
 28 “clarify that [the] ruling was in the form of a report and recommendation” and that the parties could

1 file objections. 2006 WL 1329650 at *1. The district court agreed that the magistrate judge’s initial
 2 order was “not a final order” because it was “dispositive of the . . . miscellaneous matter” involving
 3 enforcement of the administrative subpoena and therefore subject to objections and resolution by
 4 the district court. *Id.*

5 4. In keeping with that well-established precedent, Mr. Musk respectfully requests that
 6 the Court clarify that its February 10 order is a report and recommendation and that no aspect of the
 7 order is binding until either the time to file objections has passed or, if objections are filed, the
 8 district court resolves them in the SEC’s favor.*

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Respectfully submitted,

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 26 * The legal effect of the order is that of a report and recommendation “irrespective of how
 27 characterized.” *Anna’s Linens*, 2006 WL 1329650, at *1 (citing *Estate of Connors v. O’Connor*, 6
 28 F.3d 656, 658–59 (9th Cir. 1993)). Mr. Musk nevertheless respectfully submits that all involved
 would benefit from maximum clarity on this issue.